

Internal Revenue Service  
**memorandum**

CC:TL-N-5436-91  
Br2:JMSchwartzman

date: MAY 10 1991

to: District Counsel, Dallas CC:DAL  
Attn: John Repsis

from: Senior Technician Reviewer, Branch 2, Tax Litigation Division  
CC:TL:Br2

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subject: Statutory Notice Of Deficiency--Accumulated Earnings Tax

This memorandum responds to your March 29, 1991 request for assistance as to whether an adjustment assessed based on the accumulated earnings tax under I.R.C. § 534 can be included in a notice of deficiency asserting other adjustments or whether a separate notice of deficiency is more appropriate for an adjustment based on the accumulated earnings tax.

We advise that a single notice of deficiency setting forth the components of the total deficiency for the period(s) involved be issued.

In addition to potential validity problems with issuing two notices of deficiency, we note that IRM § 4464.14(1) provides, "in preparing the letter part of a notice of deficiency, the kind of tax, the taxable years involved, the amount of the deficiencies and penalties will be entered on the form." We also note that IRM § 4464.22(2) provides that, "[e]very adjustment in a notice of deficiency must be clearly and adequately explained." We further note that IRM § 4464.23(1) provides, "[a]n explanatory paragraph in a notice of deficiency should reflect a two fold purpose: (1) to inform the taxpayer in clear and concise language the adjustment; and (2) to state the position or positions of the Service with respect to the adjustments being made."

The sample notice you attached to the incoming request for assistance is acceptable. The explanation regarding the accumulated earnings tax liability labeled "NOTICE OF DEFICIENCY - WAIVER CONTINUED" should also be made part of the Examination Changes schedule of the deficiency notice, rather than just attached to the waiver Form 5564. This way, the Service will not only make fully clear the components of the total deficiency, but there will be no question of compliance with new section 7522, which requires an adequate description of taxes due in a notice of deficiency.

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